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KAMALA D. HARRIS
Attorney General of California
GARY E. TAVETIAN
Supervising Deputy Attorney General
ROSS H. HIRSCH (SBN 204320)
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6325
Fax: (213) 897-2802
E-mail: Ross.Hirsch@doj.ca.gov

*Attorneys for Plaintiffs, the People of the
State of California ex rel. the California Air
Resources Board*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. THE CALIFORNIA AIR RESOURCES
BOARD,

Plaintiffs,

v.

H&S PERFORMANCE, LLC, a Utah limited
liability company; CASEY W. SHIRTS, an
individual, BENTLEY C. HUGIE, an
individual, and DOES 1-100, inclusive,

Defendants.

**EXEMPT FROM FILING FEES
(GOV. CODE § 6103)**

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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAY 08 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

CASE NO.:

BC 545099

Assigned:
Dept.:
Action Filed:

COMPLAINT FOR:

- 1. CIVIL PENALTIES FOR
VIOLATIONS OF VEHICLE CODE
SECTION 27156;**
- 2. CIVIL PENALTIES FOR
VIOLATIONS OF TITLE 13 OF THE
CALIFORNIA CODE OF
REGULATIONS, SECTION 2220, ET
SEQ.;**
- 3. INJUNCTION PURSUANT TO
HEALTH & SAFETY CODE § 43017.**

1 Plaintiffs; the People of the State of California *ex rel.* the California Air Resources Board
2 are informed and believe and on such information and belief allege the following:

3 **INTRODUCTION**

4 1. California Air Resources Board ("ARB," or "state board"), the "clean air agency"
5 for the state of California with responsibility for control of air emissions from motor vehicles,
6 brings this action on behalf of the People of the State of California ("People" or "Plaintiffs")
7 pursuant to its authority under Health and Safety Code sections 39000, et seq., and Vehicle Code
8 section 27156. Plaintiffs seek redress under Health and Safety Code section 43017, which
9 authorizes ARB to enjoin any violation of any provision of Part 5 "Vehicular Air Pollution
10 Control" of Division 26 "Air Resources" of the Health and Safety Code. In addition, Plaintiffs
11 seek civil penalties as permitted under Division 26 of the Health and Safety Code and the Vehicle
12 Code.

13 2. For decades, California has regulated emissions from engines contained in motor
14 vehicles by adopting and implementing emission standards for motor vehicles and requiring that
15 the exhaust systems conform to standards established by ARB for both new and used motor
16 vehicles. (Health & Saf. Code, § 43600.)

17 3. To improve and maintain air quality, the ARB requires vehicle manufacturers to
18 develop and incorporate engine and emission equipment systems (e.g., catalytic converters, air
19 injection systems, diesel particulate filters, exhaust gas recirculation, etc.) that reduce emissions
20 from vehicles that cause California's severe air quality problems. The proper operation of these
21 emission control systems and components is essential in reducing motor vehicle emissions.

22 4. To ensure that these systems operate as designed, and because such modifications
23 may compromise the effectiveness of vehicles' emission control systems, California has
24 developed laws that, for example, prohibit the sale, offer for sale, advertisement, or installation of
25 motor vehicle pollution control devices, exhaust systems, or aftermarket parts unless such
26 equipment has been certified or exempted by the ARB, as well as laws that prohibit modifications
27 to any required motor vehicle pollution control device or use of aftermarket parts that may affect
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1 motor vehicle emissions. An aftermarket part is generally any device used on a vehicle that was
2 not part of the vehicle when it was originally sold.

3 5. Vehicle Code section 27156 provides that unless an exemption is obtained from
4 ARB "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or
5 mechanism intended for use with, or as a part of, a required motor vehicle pollution control
6 device or system that alters or modifies the original design or performance of the motor vehicle
7 pollution control device or system."

8 6. To obtain an exemption from Vehicle Code section 27156 for an aftermarket part,
9 a manufacturer must submit an application to the ARB for evaluation and approval according to
10 test procedures adopted by the ARB. (See Cal. Code Regs., tit. 13, § 2222, subds. (e), (h).) ARB
11 may exempt parts from the prohibitions of Vehicle Code section 27156 only if it finds the part
12 will "not reduce the effectiveness of a required motor vehicle pollution control device" or use of
13 the part "will result in emissions from the modified or altered vehicle that comply with"
14 applicable emission standards. (Vehicle Code, § 27156, subd. (h).) This exemption is granted in
15 an ARB Executive Order and allows the part to be installed on specific emission controlled
16 vehicles. Every part ARB grants an Executive Order to is assigned a number that can be verified
17 by Smog Check stations, Bureau of Automotive Repair Referee stations, or by the ARB.

18 7. Advertisement in California of any an aftermarket part that is not exempted from
19 Vehicle Code section 27156 by ARB and alters or modifies the original design or performance of
20 any required motor vehicle pollution control device or system is prohibited unless each
21 advertisement contains a required legally adequate disclaimer. (Cal. Code Regs., tit. 13, § 2222,
22 subd. (b).)

23 8. Each person who is engaged in the business of selling aftermarket parts that alter
24 or modify the original design or performance of any required motor vehicle pollution control
25 device or system and have not been exempted from Vehicle Code section 27156 must maintain
26 records of these sales, make them available to the ARB and maintain them for four years. (Cal.
27 Code Regs., tit. 13, § 2222, subd. (f).)

9. Defendants H&S Performance, LLC ("H&S Performance"), Casey W. Shirts, Bentley C. Hugie, and all other defendants (collectively "defendants"), violated Vehicle Code section 27156 and Title 13 of the California Code of Regulations, section 2220, et seq. by advertising, selling, offering to sell, and/or advertising parts or devices that alter or modify the original design or performance of required motor vehicle pollution control devices or systems on California vehicles which and have not been exempted by ARB from Vehicle Code section 27156 and by failing to maintain records thereof. Defendants' acts are particularly egregious because their violations involve parts or devices that are used on diesel vehicles, the emissions from which are designated as toxic air contaminants by California law. (See Cal. Code Regs., tit. 17, section 93000.) Plaintiffs became aware of the acts/omissions referenced herein that gave rise to the defendants' violations within the three years preceeding the filing of this complaint.

PARTIES

10. The California Air Resources Board is a public agency of the State of California. ARB, among other duties, is responsible for the control of emissions from motor vehicles and coordinates the efforts of all levels of government as they affect air quality. (Health & Saf. Code, § 39500.)

11. Defendant H&S Performance is a limited liability company with offices in St. George, Utah. H&S Performance conducts business within the State of California through advertisements, sales through dealers/distributors, internet sales, and direct sales to consumers and to vehicle repair/customization facilities in the throughout California, with a significant portion of sales in Southern California.

12. Defendant Casey W. Shirts is an individual residing in the state of Utah and is or was at all times relevant to this complaint an officer, director, manager, principal, and/or employee of Defendant H&S Performance and personally participated in the violations alleged herein.

13. Defendant Bentley C. Hugie is an individual residing in the state of Utah and is or was at all times relevant to this complaint an officer, director, manager, principal, and/or

1 employee of Defendant H&S Performance and personally participated in the violations alleged
2 herein.

3 14. The true names and capacities, whether individual, corporate, associate or
4 otherwise, of the defendants sued in this Complaint under the fictitious names of Does 1 through
5 100, inclusive, are unknown to the People who therefore sue each such defendant by such
6 fictitious name. The People will ask leave of court to amend this complaint to show the true
7 name and capacity of each defendant when these facts are discovered.

8 15. The People are informed and believe, and based on that information and belief
9 allege, that at all times relevant hereto, all defendants either committed the violations alleged
10 herein, assisted in the violations, or conspired with each other to commit the violations and are in
11 some manner responsible for the events, occurrences, and circumstances which form the basis of
12 this lawsuit and are therefore liable for the damages, costs, and other relief sought herein.

13 16. The People are informed and believe, and based on that information and belief
14 allege, that at all times relevant hereto, all private person defendants personally participated in the
15 violations alleged herein.

16 17. The People are informed and believe, and based on that information and belief
17 allege, that at all times relevant hereto, each defendant was the principal, member, director,
18 officer, agent, supervisor, contractor, employer, employee, and/or representative of the other in
19 doing the things alleged in this Complaint and that each of them was acting within the course and
20 scope of such agency, contract, and/or employment. Whenever in this complaint reference is
21 made to any act of defendants, such allegations shall be deemed to mean that the principal,
22 member, director, officer, agent, supervisor, contractor, employer, employee, and/or
23 representative of said defendants did or authorized such acts while actively engaged in the
24 management, operation or conduct of the affairs of said defendants, and while acting within the
25 course and scope of their employment.
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19. Venue is proper in the County of Los Angeles under Code of Civil Procedure section 395 because one or more of the unlawful acts described herein occurred in Los Angeles County. (Code of Civ. Proc., § 399, subd. (a).)

VIOLATIONS OF VEHICLE CODE SECTION 27156

20. Plaintiffs re-allege and incorporate herein the foregoing paragraphs 1 through 19 of this Complaint.

22. Vehicle Code section 27156(d) provides that “[i]f the court finds that a person has willfully violated this section, the court shall impose the maximum fine that may be imposed in the case, and no part of the fine may be suspended.” “Willfully” “implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.” (Veh. Code, § 27156, subd. (e); Pen. Code, § 7.)

23. Defendants, and each of them, sold, offered for sale, or advertised one or more parts, devices, apparatuses, or mechanisms including, but not limited to exhaust systems, ignition modules/systems, and tuners in California that were not certified or exempted by ARB ("parts"). These devices alter or modify the original design or performance of the vehicles' original pollution control systems. Moreover, defendants also willfully sold, offered for sale, or advertised such uncertified/non-exempted equipment in California thereby subjecting them to the

1 maximum fine that may be imposed and no part of which may be suspended. The total number of
2 the uncertified/non-exempted devices is not yet known, but upon information and belief, and
3 based on the investigation to date, including defendants' verified responses to subpoena, the
4 People allege that defendants, and each of them, sold, offered for sale, or advertised at least 1,000
5 uncertified/non-exempted pollution control devices and committed numerous additional
6 violations of offering for sale and/or advertising uncertified/non-exempted equipment in
7 California.

8 24. Defendants, and each of them, have committed separate violations of Vehicle
9 Code section 27156 for each part they sold, offered for sale, and/or advertised that was not
10 exempted by ARB. Defendants are liable for a civil penalty of up to \$1,500 per violation of
11 Vehicle Code section 27156. (Health & Saf. Code, § 43008.6.) Title 13 of the California Code of
12 Regulations, section 2225(a) provides that "[t]he executive officer may also seek fines for
13 violations of Vehicle Code section 27156, or other laws or regulations, as applicable."

14 25. Defendants are required to produce proof of correction pursuant to Vehicle Code
15 section 40150 or proof of exemption pursuant to Vehicle Code sections 4000.1 or 4000.2.

16
17 **SECOND CAUSE OF ACTION**

18 **VIOLATION OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS,**

19 **SECTION 2220, ET SEQ.**

20 **[Against All Defendants]**

21 26. Plaintiffs re-allege and incorporate herein the foregoing paragraphs 1 through 25
22 of this Complaint.

23 27. Title 13 of the California Code of Regulations, section 2222(b) prohibits
24 advertisement in California of any aftermarket part that alters or modifies the original design or
25 performance of any required motor vehicle pollution control device or system and is not certified
26 or exempted by from Vehicle Code section 27156 by ARB unless each advertisement contains a
27 required legally adequate disclaimer.

1 28. Title 13 of the California Code of Regulations, section 2222(f) provides that each
2 person who is engaged in the business of selling aftermarket parts that alter or modify the original
3 design or performance of any required motor vehicle pollution control device or system and have
4 not been exempted from Vehicle Code section 27156 by ARB must maintain records of these
5 sales and specified information, make them available to the ARB, and maintain them for four
6 years.

7 29. Defendants, and each of them, have violated Title 13 of the California Code of
8 Regulations, section 2222(b) by advertising in California of aftermarket parts that alter or modify
9 the original design or performance of any required motor vehicle pollution control devices or
10 systems and that are not certified or exempted by from Vehicle Code section 27156 by ARB
11 without legally adequate disclaimers.

12 30. Defendants, and each of them, have violated Title 13 of the California Code of
13 Regulations, section 2222(f) by failing to maintain the specified records for the specified amount
14 of time or make them available to ARB.

15 31. Title 13 of the California Code of Regulations, section 2225(a) provides that "[t]he
16 executive officer may also seek fines for violations of Vehicle Code section 27156, or other laws
17 or regulations, as applicable."

18 32. Title 13 of the California Code of Regulations, section 2220, et seq. was adopted
19 pursuant to authority of Part 5 of Division 26 of the Health and Safety Code. Health and Safety
20 Code section 43016 provides a \$500 per unit penalty for violations of regulations adopted
21 pursuant to Part 5. Defendants, and each of them, violated provisions of Title 13 of the California
22 Code of Regulations, section 2220, et seq. by committing the acts described above and ARB
23 seeks a civil penalty of \$500 per violation from each defendant.

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THIRD CAUSE OF ACTION
INJUNCTION PURSUANT TO HEALTH AND SAFETY CODE 43017
[Against All Defendants]

33. Plaintiffs re-allege and incorporate herein the foregoing paragraphs 1 through 32 of this Complaint.

34. Health and Safety Code section 43017 provides: "[t]he [ARB] may enjoin any violation of any provision of this part [Part 5 of Division 26 of the Health and Safety Code], or of any order, rule, or regulation of the state board, in a civil action brought in the name of the people of the State of California, except that the state board shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law or to show, or tending to show, irreparable damage or loss."

35. Defendants, and each of them, violated provisions of Title 13 of the California Code of Regulations, section 2220, et seq., which are regulations of the ARB adopted pursuant to authority of Part 5 of Division 26 of the Health and Safety Code by committing the acts described above, and ARB seeks an injunction described below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against defendants and each of them as follows:

1. For civil penalties in an amount according to proof to be determined at the time of trial, but not less than \$2,000,000, pursuant to the following:

- a. Health and Safety Code section 43008.6(b): \$1,500 per violation;
- b. Health and Safety Code section 43016: \$500 per violation.

2. For the issuance of preliminary and permanent injunctive relief against the defendants, and each of them, enjoining them from violating Vehicle Code sections 27156, and Title 13 of the California Code of Regulations, section 2220, et seq., and from engaging in or performing, directly or indirectly, any and all of the following acts:

- a. Offering for sale, advertising, or representing in California any motor vehicle pollution control device that has not been certified or exempted by ARB.

- 1 b. Offering for sale, advertising, or representing in California any motor vehicle
2 pollution control device as a certified or exempted device which, in fact, is not
3 a certified or exempted device.
- 4 c. Offering for sale, advertising, or representing in California any motor vehicle
5 pollution control device that alters or modifies the original design or
6 performance of the motor vehicle pollution control system unless that device
7 has been certified or exempted by ARB.
- 8 d. Offering for sale, advertising, or representing in California any motor vehicle
9 exhaust system, or part thereof, in California unless that system or part has
10 been certified or exempted by ARB.
- 11 e. Offering for sale, advertising, or representing in California through any agent
12 any aftermarket part for use on a motor vehicle unless that part has been
13 certified or exempted by ARB.
- 14 f. Selling any motor vehicle pollution control device that has not been certified or
15 exempted by ARB, directly or indirectly through any person, whether such
16 person is a dealer, distributor, reseller, affiliate, contractor, or otherwise, to any
17 other person that reasonably may install such pollution control device on a
18 vehicle registered in California.
- 19 g. Selling any motor vehicle pollution control device as a certified or exempted
20 device which, in fact, is not a certified or exempted device, directly or
21 indirectly through any person, whether such person is a dealer, distributor,
22 reseller, affiliate, contractor or otherwise, to any other person that reasonably
23 may install such pollution control device on a vehicle registered in California.
- 24 h. Selling any device that alters or modifies the original design or performance of
25 a motor vehicle pollution control system unless that device has been certified
26 or exempted by ARB, directly or indirectly through any person, whether such
27 person is a dealer, distributor, reseller, affiliate, contractor or otherwise, to any
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1 other person that reasonably may install such device on a vehicle registered in
2 California.

3 i. Selling any motor vehicle exhaust system, or part thereof, in California unless
4 that system or part has been certified or exempted by ARB, directly or
5 indirectly through any person, whether such person is a dealer, distributor,
6 reseller, affiliate, contractor or otherwise, to any other person that reasonably
7 may install such device on a vehicle registered in California.

8 j. Selling any aftermarket part for use on a motor vehicle unless that part has
9 been certified or exempted by ARB, directly or indirectly through any person,
10 whether such person is a dealer, distributor, reseller, affiliate, contractor or
11 otherwise, to any other person that reasonably may install such device on a
12 vehicle registered in California.

13 k. Making or disseminating in California any advertisement that references any
14 device, apparatus, or mechanism that alters or modifies the original design or
15 performance of any required motor vehicle pollution control device or system
16 and not exempted from Vehicle Code section 27156 unless each advertisement
17 contains a conspicuous disclaimer. The disclaimer shall read: "LEGAL IN
18 CALIFORNIA ONLY FOR RACING VEHICLES THAT MAY NEVER BE
19 USED, OR REGISTERED OR LICENSED FOR USE, UPON A
20 HIGHWAY." The disclaimer shall be in a minimum font size 10, and shall
21 appear on each page that any non-certified/non-exempt part appears.

22 l. Plaintiff further requests the issuance of preliminary and permanent injunctive
23 relief against the defendants, and each of them, compelling them to institute a
24 recall program for every for every purchaser in California of any
25 uncertified/non-exempt part already sold.

26 3. For any and all costs incurred in this lawsuit.
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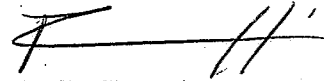
1 4. For such other and further relief as the Court deems proper.

2
3 [Note—Pursuant to California Code of Civil Procedure sections 446(a) and 431.30(d), your
4 answer to this complaint is required to be verified and not a general denial.]

5
6 Dated: May 8, 2014

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California

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9 

10 ROSS H. HIRSCH
11 Deputy Attorney General
12 Attorneys for Plaintiffs, the People of the State
13 of California ex rel. the California Air
14 Resources Board